

NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND
MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE RULES.
See Ariz. R. Supreme Court 111(c); ARCAP 28(c); Ariz. R. Crim. P. 31.24

FILED BY CLERK

JUN 28 2010

COURT OF APPEALS
DIVISION TWO

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

IN RE BRIAN P.

) 2 CA-JV 2010-0040
) DEPARTMENT A
)
) MEMORANDUM DECISION
) Not for Publication
) Rule 28, Rules of Civil
) Appellate Procedure
)

APPEAL FROM THE SUPERIOR COURT OF PIMA COUNTY

Cause No. JV17832201

Honorable Kathleen Quigley, Judge Pro Tempore

AFFIRMED

Robert J. Hirsh, Pima County Public Defender
By Susan C.L. Kelly

Tucson
Attorneys for Minor

K E L L Y, Judge.

¶1 The minor, Brian P., was charged by delinquency petition with disorderly conduct and criminal damage, both domestic violence offenses. The state also filed a petition to revoke the probation he was already serving for a disorderly conduct offense alleged in an August 2009 delinquency petition. Brian subsequently admitted having committed disorderly conduct as domestic violence and was adjudicated delinquent on

that count; he also admitted two of the allegations in the petition to revoke probation. After a disposition hearing, the juvenile court terminated seventeen-year-old Brian's probation as unsuccessful and designated the open-ended offense from the August 2009 delinquency petition a class six felony.

¶2 Brian's counsel has filed a brief in compliance with, inter alia, *Anders v. California*, 386 U.S. 738 (1967), and *State v. Clark*, 196 Ariz. 530, 2 P.3d 89 (App. 1999), asking this court to review the entire record for fundamental error. See *In re Maricopa County Juv. Action No. JV-117258*, 163 Ariz. 484, 485-87, 788 P.2d 1235, 1236-38 (App. 1989) (affording juveniles adjudicated delinquent *Anders*-type review on appeal). As an arguable issue, counsel asks us to consider the propriety of the court's decision to terminate Brian's probation as unsuccessful.

¶3 "It is within the juvenile court's discretion to determine the disposition of a juvenile following an adjudication of delinquency and, absent clear abuse of discretion, we will not disturb that disposition." *In re Sean M.*, 189 Ariz. 323, 324, 942 P.2d 482, 483 (App. 1997). It is "within the court's authority pursuant to Rule 31(D), Ariz. R.P. Juv. Ct.," to terminate a juvenile's probation and designate that termination as unsuccessful. *In re Themika M.*, 206 Ariz. 553, ¶ 6, 81 P.3d 344, 345 (App. 2003).

¶4 At the disposition hearing, the probation officer stated Brian was respectful and "not a bad [individual]" but he did have "a lot of issues." Recommending probation be terminated as unsuccessful, the probation officer added that Brian had not "done anything that was asked for by the Court" and that there had been "five referrals within a one month period." Brian's counsel urged the court not to terminate his probation as

unsuccessful, noting the consequences of that characterization, including the designation of the initial offense as a felony. But the court chose to reject counsel’s argument, as was its prerogative, noting it did not believe Brian had “earned a neutral termination” and explaining why. We find no abuse of discretion here.

¶5 The record establishes there was an adequate factual basis for Brian’s admissions and the juvenile court advised him of the rights he was waiving. The record supports the court’s finding that the admissions were knowing, voluntary, and intelligent. Thus, having reviewed the record as requested and having found no error that can be characterized as fundamental, we affirm the delinquency adjudication and the disposition.

/s/ Virginia C. Kelly
VIRGINIA C. KELLY, Judge

CONCURRING:

/s/ Joseph W. Howard
JOSEPH W. HOWARD, Chief Judge

/s/ Philip G. Espinosa
PHILIP G. ESPINOSA, Presiding Judge